

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



November 26, 2002

Ms. Helen Valkavich
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2002-6762

Dear Ms. Valkavich:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172876.

The City of San Antonio (the "city") received a request for "all records of all hours spent by any attorneys representing the [c]ity in *Kapche v. City of San Antonio*. . .," including "all billing records for attorneys or employees of the [c]ity [and] all outside counsel . . ." You have released some of the responsive information. You claim that the remaining requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note that the submitted information is subject to section 552.022 of the Government Code. This section enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law. Section 552.022(a)(16) defines one such category as "[i]nformation that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege." The submitted information, which consists of attorney fee bills, must therefore be released under section 552.022(a)(16) unless the information is expressly made confidential under other law. You claim that the description of services portion of the responsive attorney fee bills is excepted from disclosure under section 552.103 of the Government Code. Section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.- Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). You make no other arguments that the information is confidential under "other law" for purposes of section 552.022(a). However, we find that the submitted

information contains social security numbers, which could be made confidential by "other law" for purposes of section 552.022.

Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code.¹ A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act. 42 U.S.C. § 405(c)(2)(C)(viii)(I); *see* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security numbers, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990. As you raise no further exceptions to release, you must release the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Maverick F. Fisher
Assistant Attorney General
Open Records Division

MFF/seg

Ref: ID# 172876

Enc: Submitted documents

c: Mr. Michael A. Greene
Rosenthal & Greene, P.C.
1001 Southwest 5th Avenue, Suite 1907
Portland, Oregon 97204
(w/o enclosures)

CAUSE NO. GV204394

CITY OF SAN ANTONIO
Plaintiff,

VS.

GREG ABBOTT, ATTORNEY
GENERAL OF TEXAS
Defendant.

§ IN THE DISTRICT COURT OF
§
§
§ TRAVIS COUNTY, TEXAS
§
§
§
§ 353rd JUDICIAL DISTRICT

FILED

05 JAN 26 PM 2:18

Umarie Rodriguez-Suarez
DISTRICT CLERK
TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for entry of an agreed final judgment. Plaintiff, City of San Antonio, Texas, and Defendant, Greg Abbott, Attorney General of Texas, appeared by and through their respective attorneys and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552. The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor was sent reasonable notice of this setting and of the parties' agreement that the City may withhold some of the information at issue; that the requestor was also informed of his right to intervene in the suit to contest the withholding of this information; and that the requestor, Michael A. Greene, has not informed the parties of his intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The information at issue, specifically, the descriptions, or parts thereof, in the fee bills for the years 1997 through 2002, for services by Villareal, Moreno & Ruiz, for representation in

Kapche v. City of San Antonio, as marked by the Office of the Attorney General, is excepted from disclosure by Tex. R. Evid. 503.

2. The City may redact the descriptions, or parts thereof, in the legal bills as enumerated in ¶ 1 of this Agreed Final Judgment.

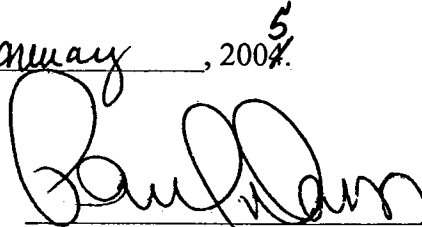
3. If it has not already done so, the City shall release the legal bills, with the information described in ¶ 1 of this Agreed Final Judgment redacted, to the requestor promptly upon receipt by the City of the Agreed Final Judgment signed by the Court.

4. All costs of court are taxed against the parties incurring the same;

5. All relief not expressly granted is denied; and

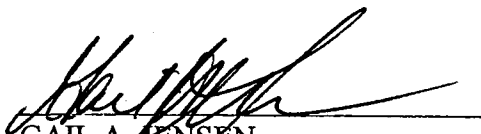
6. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 26th day of January, 2005.

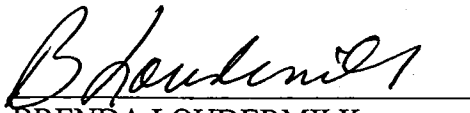


PRESIDING JUDGE

APPROVED:



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